



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 515 OF 2001

ELEMENEJILDO WANJOHI GICHIRU PLAINTIFF

VERSUS

LYDIA GOIRI & ANOTHER DEFENDANTS

RULING

It is now settled law that before an order of injunction is issued by the court the complaining party must establish the following:-

- (1) That there is a prima facie case of the main case, established with the probability of success;
- (2) That if the injunction sought is not granted, the complaining party might suffer irreparable injury not likely to be compensated by an award of damages. And if the two conditions above raise any doubt, then:
- (3) The court decides the application on a balance of convenience.

(See Giella v Cassman Brown & Co. Ltd [1973] E.A 358 and also Abel Salim & Others vs Okong'o others [1976] KLR 42).

If, then the complaining party draws the application in respect thereof and mentions none of these elements and even during the arguments in court says nothing about them, then one wonders why he/she came to this court for such an order!

In the present application the applicant is complaining about an access road which the respondents have allegedly constructed on his land but does not say how this has affected him and/or what damages he has suffered in respect thereof, or if there is no sufficient compensation which can meet this damage!

On the other hand, counsel for the respondent argues that there has always been a foot path at the suit site which was not part of the applicants land, used by people going to Gakuru Ngarai's land, now plot numbers 590 and 591 (previously plot No.18), but which he acquired wrongly after annexing the area covered by the foot path on the death of the said Gakuru Ngarai.

That since the acquisition there has been a dispute over the site. That a surveyor visited the land and established the foot path and that it is this action the applicant is trying to restrain.

Given this background, this is not the sought of case where an order for injunction can be granted.

The application has not at all set out and/or established the set conditions for such an order to be granted.

What is the present status quo? That there is a foot path which has been used by those going to plot number 18, otherwise now known as plot numbers 590 and 591 and that this status quo should not be dismissed until the hearing and finalization of the pending case on merit.

I dismiss this application with costs.

Delivered this 11th day of July, 2001.

D.K.S AGANYANYA

JUDGE